IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

WP(C).No. 21073 of 2006(H)

PETITIONER:

THE EZHUKONE GOVT.SCHOOL PROTECTION
COUNCIL, REP. BY ITS CONVENOR, V.P. PRABHAS,
S/O. PRABHAKARAN, VRINDAVAN, EZHUKONE P.O.,KOLLAM.

BY ADV. SMT.V.P.SEEMANDINI
SMT.S.KARTHIKA
SRI.M.S.UNNIKRISHNAN
SRI.M.R.ANISON
SMT.T.B.REMANI
SMT.LEKSHMY RAMANATHAN
SRI.K.RAJENDRAN

RESPONDENTS:

1. THE UNION OF INDIA,
REP. BY SECRETARY TO GOVT. OF INDIA,
MINISTRY OF RAILWAY, RAILWAY BHAVAN, NEW DELHI.

2. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT (F.T.P), TRIVANDRUM.

3. THE DY. CHIEF ENGINEER(CONSTRUCTION),
OFFICE OF THE DY. CHIEF ENGINEER(CONSTRUCTION),
SOUTHERN RAILWAY, KOLLAM.

4. THE DISTRICT COLLECTOR, KOLLAM.

5. THE SPECIAL TAHSILDAR,
LAND ACQUISITION RAILWAYS, KOLLAM.

* 6. EZHUKONE GRAMA PANCHAYAT REPRESENTED BY ITS SECRETARY

* EZHUKONE GRAMA PANCHAYAT REPRESENTED BY ITS SECRETARY IS IMPLEADED AS ADDL.RESPONDENT 6 AS PER ORDER DATED 26.10.06

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS
SRI.M.K.CHANDRA MOHANDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21073 of 2006(H)

APPENDIX

PETITIONERS EXHIBITS.

EXT.P1: TRUE COPY OF THE 4(1) NOTIFICATION BY THE 2ND RESPONDENT IN THE MALAYALA MANORAMA DAILY DATED 10.12.04.

EXT.P2: TRUE COPY OF THE REPRESENTATION IN JUNE 2004 SIGNED BY THE MEMBERS OF PETITIONER, STUDENTS AND TEACHERS OF THE SCHOOL.

EXT.P3: TRUE COPY OF THE ALTERNATE PROPOSAL TO THE UNION MINISTER FOR RAILWAYS.

EXT.P4: TRUE COPY OF THE RELEVANT PORTION OF THE ENGINEERING CODE.

EXT.P5: TRUE COPY OF THE LETTER DATED 11.10.04 ALONG WITH SKETCH.

EXT.P6: TRUE COPY OF THE COMMUNICATION DATED 14.10.04 OF THE EZHUKONE GRAMA PANCHAYAT.

EXT.P7: TRUE COPY OF THE REQUEST TO THE 2ND RESPONDENT

EXT.P8: TRUE COPY OF THE REPRESENTATION DATED 1.11.04 BY THE PETITIONER.

EXT.P9: TRUE COPY OF THE COMMUNICATION DATED 17.11.04.

EXT.P10: TRUE COPY OF THE LETTER DATED 23.11.04.

EXT.P11: TRUE COPY OF THE LETTER DATED 5.02.05.

EXT.P12: TRUE COPY OF THE REPRESENTATION DATED 30.03.05.

THOTTATHIL B. RADHAKRISHNAN, J

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W.P.(C) No. 21073 Of 2006

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Dated this the 1st day of December, 2006.

J U D G M E N T

Two conflicting public interest cases are placed for consideration. On the one is the project of the Southern Railway for conversion of the Kollam-Shencottah meter gauge route to broad gauge, between Kollam and Punalur. That purpose can never be termed as one not amounting to a public purpose for the purpose of Land Acquisition Act. There is no challenge also to that purpose as such, but what the petitioners, the Ezhukone Govt.School Protection Council points out is that the alignment as finalised, would result in pulling down a lower primary school in Ezhukone, which is the only institution available locally to cater to the ordinary citizens including those below poverty line, who cannot afford to go to other schools by paying fee or putting up the financial requirements of such institutions.

2. In so far as fixing the alignment is concerned, that is a matter entirely within the technical skill of those who are duty bound and authorised to carry out such functions. It is not within the province of the writ court, nor would it be prudent for it, to sit in appeal on any such decision by the technical personnel except of course, in

exceptionally exceptional cases, where pleaded and proved situations of arbitrariness and malafides deserves to be upheld. This is not one such case.

3. On the given set of facts, the Railways appear to have risen to the situation arising as a result of the acquisition. An amount of more than Rs.14 lakhs(Rs.14,53,000/-)would be the compensation for the land and the existing structure. However, the Railways have offered to the Government that they would build a new school building in the remaining portion spending above Rs.40 lakhs (Rs.40,00,000/-) which is more than three times the amount that the Government would have got, had the land been merely is acquired. While the Railways make such expenditure to ensure that the school is made available it in fact extends its resources for novel purpose, to make available the facilities for the children.

4. The petitioner however points out that the acquisition would result in depletion of the entire land available, surrounding the school, thereby adversely affecting the opportunity for the young children for appropriate extra curricular activities by way of sports and games. It is also pointed out that there will be a crunch for space for further

development of the school. Learned counsel for the Railways points out that when the new building comes up it would be in two stores and would occupy lesser area than that is occupied by the school buildings as they now stands, which are two separate single storeyed buildings, one of which, though put to use for serving mid-day meals, is in a dilapidated state. In fact, that structure has now been repaired to accommodate the students, temporarily, awaiting the construction of the new building. The aforesaid facts would show that the developmental activities of the Nation, as a whole, is attempted to be carried on without sacrificing the local interest of the future generation, namely, the young children.

5. At the same time it also requires to be considered by those empowered in that behalf as to whether any additional area is required to be provided for the Government school, that caters to those belong to the lower economic strata of the society. Under such circumstances, the Ezhukone Panchayat, the local authority which has immense powers under the present Panchayat Raj Scheme and the Government need to apply their mind in a positive way to decide whether the school requires any additional land and if so, to find out ways and means of achieving the same, in the interest of the young

ones. This, of course, is not a ground on which there could be any judicial intervention, as of now.

6. In the result, while dismissing the writ petition, it is directed that, the appropriate authorities in the Ezhukone Panchayat and the State of Kerala will ensure that this judgment attains appropriate attention at the hands of the Ministry so that any decision, if found needed and proper, would be taken and the needful done.

The learned Government Pleader will ensure that a copy of this judgment is communicated to Principal Secretary in the Department of General Education, for appropriate attention and follow up action.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

SJ